



SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Part 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Final rule.

SUMMARY: This document contains final rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) to simplify and clarify the process for transferring approvals and to add sections dealing with general permits and modifications to approvals. These amendments are to be made effective upon publication of this rulemaking.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Esq., General Counsel, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail: joyler@srbc.net. Also, for further information on the final rulemaking, visit the Commission's website at www.srbc.net.

SUPPLEMENTARY INFORMATION: Notice of proposed rulemaking was published in the Federal Register on September 21, 2015 (80 FR 56936); the New York Register on October 7, 2015; the Maryland Register on October 16, 2015; and the Pennsylvania

Bulletin on October 17, 2015. The Commission convened a public hearing on October 29, 2015, in Grantville, Pennsylvania and a written comment period was held open through November 9, 2015.

General Comments

Comment: The rule will simplify the approval process for certain modifications and will be less burdensome on permittees and the Commission while still protecting the Susquehanna River Basin resources.

Comment: The proposed rule will assist in streamlining the administrative and permitting process and are positive changes.

Comment: The proposed rule should serve to provide great potential improvements for both the Commission and the regulated community.

Response: The Commission appreciates the comments.

Comments by Section, Part 806

Section 806.6—Transfer of approvals.

Comment: We appreciate § 806.6(b) addressing previously unpermitted withdrawals and uses of water, which should address actions that affect local water resources.

Response: The Commission appreciates the comment. This section is largely unchanged from the prior regulatory text.

Comment: The Commission should require approvals being transferred that are greater than 10 years old to perform a new or updated aquatic resource survey (ARS).

Response: The Commission disagrees with the comment. The transfer rule does not allow new project sponsors to increase the withdrawal or consumptive use of the project above what was previously approved. The Commission will be able to require an ARS, if

appropriate and necessary, when these approvals expire and need to be renewed pursuant to 18 CFR 806.14.

Comment: The proposed rule will allow approvals where there is a change in ownership but no change in the project or the use of water to occur without the submittal of an entirely new application, and the Commission is to be commended for proposing this change.

Response: The Commission appreciates the comment.

Section 806.14—Contents of application.

Comment: The Commission proposed to add § 806.14(d) to set forth the application requirements for minor modifications. Section 806.14(a) should be correspondingly revised to include an exception for applications for minor modifications.

Response: The Commission agrees and will add the phrase “applications for minor modifications” in the first sentence of § 806.14(a) to clarify that the requirements of that paragraph do not apply to applications for minor modifications.

Section 806.15—Notice of application.

Comment: The next to last sentence of § 806.15(a) appears to contain grammatically incorrect language (which appears in the existing regulatory text). This should be corrected.

Response: The Commission agrees with the comment. The next to last sentence will be corrected to delete the word “for” and place two commas to make the sentence grammatically correct.

Comment: The intent of proposed rulemaking is that new paragraph (i) is meant to be the exclusive source of notice requirements for minor modification; however, no changes

were proposed to paragraph (a) that make it clear that paragraph (a) does not apply to minor modifications. Paragraph (a) should be clarified.

Response: The Commission agrees with the comment and also finds it applicable to new paragraph (h). In the final rule, paragraph (a) will now begin with “Except with respect to paragraphs (h) and (i), ...”.

Comment: The extension of time allotted for notices to be published from 10 to 20 days allows ample time for all interested parties and the public to comment.

Response: The Commission appreciates with the comment.

806.17—General permits.

Comment: Section 806.17(d)(3) provides that a Notice of Intent (NOI) must be denied if the project does not meet the requirements of § 806.21(a) or (b). However, § 806.21(b) does not provide any requirements, but rather gives the Commission discretion to modify or deny a project if the Commission determines that the project is not in the best interest of the conversation, development, management or control of the basin’s water resources or is in conflict with the Comprehensive Plan. The reference to § 806.21(b) should be removed or the standard placed verbatim into § 806.17(d)(3).

Response: The Commission does not agree with the proposed revisions of the commenter. However, the Commission agrees that the paragraph could be clarified in light of the comment. As a part of the final rule, the Commission will revise paragraph (d)(3) to read as set out in the regulatory text at the end of this document.

Comment: The Commission does not define “minimal adverse impacts” in § 806.17(a)(4).

Comment: The Commission should tier a determination of minimal adverse impacts, looking at the existing standards in 18 CFR 806.23 or adopting a “significance” inquiry as provided in the National Environmental Policy Act (NEPA).

Comment: The Commission should add a paragraph that provides that it shall not issue a general permit that creates or incites significant direct, indirect or cumulative impacts to water resources.

Response: The Commission agrees that § 806.17(a)(4) would be strengthened by a reference to the Commission’s existing regulatory review standards. These standards are known and defined with respect to Commission reviews of consumptive uses, withdrawals and diversions. Conversely, the Commission does not agree that the inquiries under NEPA would provide clarity in a substantive review in establishing a general permit. In addition, adopting a new set of standards for general permits would add complexity and confusion to the process that is avoided by referencing the Commission’s existing review standards. The Commission will revise the final rule so that § 806.17(a)(4) reads as set out in the regulatory text at the end of this document.

Comment: The proposed regulations seem to presume NOI issuance.

Response: The Commission disagrees with the comment. Part of the proposed rule includes § 806.17(d) entitled, “Denial of Coverage.”

Comment: Public notice under the general permit procedure is inadequate. Specifically, the public is not afforded notice via the Federal Register of receipt of an NOI.

Response: The Commission agrees that the procedures do not set forth any requirement that the Commission publish receipt of NOIs. Accordingly, the Commission will amend

the final rule to include a new paragraph (c)(9) to read as set out in the regulatory text at the end of this document.

Comment: Section 806.17(b)(3) should be revised to require the Commission to take into account the level of public interest and likelihood for controversy for any proposed general permit in determining whether to hold a public hearing.

Response: The Commission agrees with the comment. The Commission will amend § 806.17(b)(3) to read as set out in the regulatory text at the end of this document.

Comment: Section 806.17(c)(4) should be amended to provide for full Commission review and approval of general permits.

Response: No such revision is necessary. Section 806.17(b)(4) currently provides that the Commission will adopt and issue general permits. Paragraph (c)(4) provides that the approval of coverage under a general permit, shall be determined by the Executive Director unless the Commission establishes a different mechanism for approval when issuing the general permit. This process is similar to the existing process for approving projects under the Commission's Approvals By Rule in 18 CFR 806.22(e)(7) and (f)(10), where the Executive Director issues the approvals to project sponsors.

Comment: Section 806.17(c)(8) should be amended to require the project to conduct an aquatic resource survey (ARS) before any General Permit is renewed or amended.

Response: The Commission disagrees with the comment. The Commission currently requires projects to conduct an ARS on a case-by-case basis for individual applications for surface water withdrawals. The Commission does not believe that it would be appropriate to require ARSs to be conducted as a rule for every general permit NOI holder for renewal or amendment. The general permit procedures as proposed, however,

are sufficiently broad to allow the Commission, as a part of the scope or application of a general permit developed by the Commission, to require an ARS from NOI applicants, if the Commission finds it appropriate for the type of activity being permitted.

Comment: The Commission is urged to specifically mandate adequate fees for general permit applications.

Response: The Commission appreciates the comment. The proposed rule provides that the Commission may set a fee for NOIs to any general permit. This allows the Commission to set a specific fee for NOIs under each particular general permit and tailor the fees to what is required of the NOI applicants and the Commission for each activity permitted.

806.18—Approval modifications.

Comment: Section 806.18(c)(8) should be revised to be grammatically consistent with paragraphs (c)(1) through (7).

Response: The Commission agrees with the comment. Paragraph (c)(8) is revised to read as set out in the regulatory text at the end of this document.

Comment: The word “flows” in § 806.18(d)(4) should be revised to “flow.”

Response: The Commission agrees with the comment and has made this revision to the final rule.

Comment: Aside from the correction of typographical errors, every suggested minor modification category includes changes in permit terms that can result in significant adverse impacts to local water resources and should not be allowed as minor modifications.

Response: The Commission disagrees with the comment. In developing the list of minor modifications, the Commission examined the range of modification requests that it receives and carefully vetted those categories and developed them specifically because they do not pose significant adverse impacts to local water resources. Review of these types of modifications is largely administrative in nature and poses little to no risk to human health, safety or the environment.

Transition Issues

As a part of the Resolution adopting this final rule, the Commission also has set a reduced fee for applications for minor modifications at \$750. Future adjustments may be made to this application fee during the regular annual adjustments to the Commission fee schedule.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR part 806 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

1. The authority citation for part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10, and 15.2, Pub. L. 91-575, 84 Stat. 1509 *et seq.*

Subpart A—General Provisions

2. Amend § 806.4 by adding paragraph (a)(9) and revising paragraph (c) to read as follows:

§ 806.4 Projects requiring review and approval.

(a) * * *

(9) Any project subject to coverage under a general permit issued under § 806.17.

* * * * *

(c) Any project that did not require Commission approval prior to January 1, 2007, and not otherwise exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v), or (a)(3)(iv) of this section, pursuant to paragraph (b) of this section, may be undertaken by a new project sponsor upon a change of ownership pending action on a transfer application under § 806.6.

3. Revise § 806.6 to read as follows:

§ 806.6 Transfer of approvals.

(a) An existing Commission approval may be transferred to a new project sponsor by the Executive Director provided:

(1) The application for transfer is submitted within 90 days of a transfer or change in ownership of a project.

(2) The new project sponsor operates the project subject to the same terms and conditions of the existing approval pending approval of the transfer application.

(3) Any noncompliance by the existing project sponsor associated with the project or by the new project sponsor associated with other projects is resolved to the Commission's satisfaction.

(4) If the existing approval is greater than 10 years old, the transfer shall be conditioned to require the submission of an updated metering and monitoring plan consistent with the requirements of § 806.30.

(5) If the existing project has an unapproved withdrawal, consumptive use and/or diversion listed in paragraph (b) of this section, the transfer shall be conditioned to require the submission of a new application for review and approval of the unapproved withdrawal, consumptive use and/or diversion consistent with §§ 806.4 and 806.14.

(6) Any modifications proposed by the new project sponsor shall be subject to a separate application and review process under §§ 806.14 and 806.18.

(b) Previously unapproved activities associated with a project subject to transfer under paragraph (a) of this section include:

(1) The project has an associated pre-compact consumptive water use that has not been subject to approval or had mitigation approved by the Commission.

(2) The project has an associated diversion that was initiated prior to January 23, 1971.

(3) The project has an associated groundwater withdrawal that was initiated prior to July 13, 1978, and that has not been approved by the Commission.

(4) The project has an associated surface water withdrawal that was initiated prior to November 11, 1995, and that has not been approved by the Commission.

(5) The project has a consumptive water use approval and has an associated withdrawal that has not been approved by the Commission.

(c) Upon undergoing a change of name that does not affect ownership or control of the project, the project sponsor must request a reissuance of the project's approval by the Executive Director within 90 days from the date of the change.

Subpart B—Application Procedure

4. Amend § 806.14 by revising paragraph (a) introductory text and adding paragraph (d) to read as follows:

§ 806.14 Contents of applications.

(a) Except with respect to applications to renew an existing Commission approval, applications for minor modifications, and Notices of Intent for approvals by rule and general permits, applications shall include, but not be limited to, the following information and, where applicable, shall be submitted on forms and in the manner prescribed by the Commission. Renewal applications shall include such information that the Commission determines to be necessary for the review of same, shall be subject to the standards set forth in subpart C of this part, and shall likewise be submitted on forms and in the manner prescribed by the Commission.

* * * * *

(d) Applications for minor modifications must be complete and will be on a form and in a manner prescribed by the Commission. Applications for minor modifications must contain the following:

- (1) Description of the project;
- (2) Description of all sources, consumptive uses and diversions related to the project;
- (3) Description of the requested modification;
- (4) Statement of the need for the requested modification;
- (5) Demonstration that the anticipated impact of the requested modification will not adversely impact the water resources of the basin; and

(6) Any other information that the Commission or Executive Director deems necessary.

5. Amend § 806.15 by revising paragraph (a) and adding paragraphs (h) and (i) to read as follows:

§ 806.15 Notice of application.

(a) Except with respect to paragraphs (h) and (i) of this section, any project sponsor submitting an application to the Commission shall provide notice thereof to the appropriate agency of the member State, each municipality in which the project is located, and the county planning agency of each county in which the project is located. The project sponsor shall also publish notice of submission of the application at least once in a newspaper of general circulation serving the area in which the project is located. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (f) of this section, if applicable. All notices required under this section shall be provided or published no later than 20 days after submission of the application to the Commission and shall contain a description of the project, its purpose, the requested quantity of water to be withdrawn, obtained from sources other than withdrawals, or consumptively used, and the address, electronic mail address, and phone number of the project sponsor and the Commission. All such notices shall be in a form and manner as prescribed by the Commission.

* * * * *

(h) For Notices of Intent (NOI) seeking coverage under a general permit, the project sponsor shall provide the NOI to the appropriate agency of the member State and each

municipality and county planning agency in which the project is located and any additional notice identified in the general permit.

(i) For applications for minor modifications, the project sponsor shall provide notice of the application to the appropriate agency of the member State and each municipality and county planning agency in which the project is located.

6. Add § 806.17 to read as follows:

§ 806.17 General permits.

(a) *Coverage and purpose.* The Commission may issue a general permit, in lieu of issuing individual approvals, for a specifically described category of diversions, water withdrawals and consumptive uses that:

- (1) Involve the same or substantially similar types of operations or activities;
- (2) Require the same limitations or operating conditions, or both;
- (3) Require the same or similar monitoring and reporting; and
- (4) Will result in minimal adverse impacts consistent with §§ 806.21 through

806.24.

(b) *Procedure for issuance.* (1) At least 30 days prior to the issuance of a general permit, the Commission shall publish notice in the *Federal Register* and the member jurisdiction administrative bulletins of the intent to issue a general permit.

(2) At least 30 days shall be provided for interested members of the public and Federal, State and local agencies to provide written comments on a proposed general permit.

(3) The Commission or Executive Director may, in its discretion, hold a public hearing on a proposed general permit, taking into account the level of public interest and likelihood of controversy.

(4) The issuance of a general permit adopted by the Commission will be published in the *Federal Register* and the member jurisdiction administrative bulletins. This notice shall set forth the effective date of the general permit.

(c) *Administration of general permits.* General permits may be issued, amended, suspended, revoked, reissued or terminated under this section.

(1) Any general permit issued under this section shall set forth the applicability of the permit and the conditions that apply to any diversion, withdrawal or consumptive use authorized by such general permit.

(2) The Commission may fix a term to any general permit issued.

(3) A project sponsor shall obtain permission to divert, withdraw or consumptively use water in accordance with a general permit by filing a Notice of Intent (NOI) with the Commission, in a form and manner determined by the Commission.

(4) Approval of coverage under a general permit shall be determined by the Executive Director or by any other manner that the Commission shall establish for any general permit.

(5) The Commission may set a fee for NOIs to any general permit.

(6) A project sponsor shall provide notice for NOIs in accordance with § 806.15(h) and any additional notice requirements that the Commission may adopt for any general permit.

(7) The requirements of § 806.16 apply to the review of NOIs to any general permit.

(8) Upon reissuance or amendment of a general permit, all project sponsors permitted to divert, withdraw or consumptively use water in accordance with the previous general permit shall be permitted to continue to operate with the renewed or modified general permit unless otherwise notified by the Commission.

(9) Notice of receipt of NOIs shall be published on the Commission's website and in any other manner that the Commission shall establish for any general permit.

(d) *Denial of coverage.* The Executive Director will deny or revoke coverage under a general permit when one or more of the following conditions exist:

(1) The project or project sponsor does not or can no longer meet the criteria for coverage under a general permit.

(2) The diversion, withdrawal or consumptive use, individually or in combination with other similar Commission regulated activities, is causing or has the potential to cause adverse impacts to water resources or competing water users.

(3) The project does not comport with § 806.21(a) or (b).

(4) The project includes other diversions, withdrawals or consumptive uses that require an individual approval and the issuance of both an individual approval and a general permit for the project would constitute an undue administrative burden on the Commission.

(5) The Executive Director determines that a project cannot be effectively regulated under a general permit and is more effectively regulated under an individual approval.

(e) *Requiring an individual approval.* If coverage is denied or revoked under paragraph (d) of this section, the project sponsor shall be notified in writing. The notice will include a brief statement for the reasons for the decision. If coverage under a general permit was previously granted, the notice will also include a deadline for submission of an application for an individual approval. Timely submission of a complete application will result in continuation of coverage of the applicable withdrawal, consumptive use or diversion under the general permit, until the Commission takes final action on the pending individual approval application.

(f) *Action of the Commission.* Action by the Executive Director denying or revoking coverage under a general permit under paragraph (d) of this section, or requiring an individual approval under paragraph (e) of this section, is not a final action of the Commission until the project sponsor submits and the Commission takes final action on an individual approval application.

7. Add § 806.18 to read as follows:

§ 806.18 Approval modifications.

(a) *General.* A project sponsor shall submit an application for modification of a current approval prior to making a change in the design, operational plans, or use as presented in the application upon which the approval was originally issued, and that will affect the terms and conditions of the current approval.

(b) *Applications for modification.* A project sponsor may apply for a modification of a current approval by submitting an application for modification to the Commission.

(c) *Minor modifications.* The following are minor modifications:

(1) Correction of typographical errors;

- (2) Changes to monitoring or metering conditions;
- (3) Addition of sources of water for consumptive use;
- (4) Changes to the authorized water uses;
- (5) Changes to conditions setting a schedule for developing, implementing, and/or reporting on monitoring, data collection and analyses;
- (6) Changes to the design of intakes;
- (7) Increases to total system limits that were established based on the projected demand of the project; and
- (8) Modifications of extraction well network used for groundwater remediation systems.

(d) *Major modifications.* Major modifications are changes not considered to be minor modifications. Major modifications may include, but are not limited to:

- (1) Increases in the quantity of water withdrawals, consumptive uses or diversions;
- (2) Increases to peak day consumptive water use;
- (3) Increases to the instantaneous withdrawal rate or changes from a single withdrawal rate to a varied withdrawal rate;
- (4) Changes affecting passby flow requirements; and
- (5) Changes that have the potential for adverse impacts to water resources or competing water users.

(e) *Notice and approval.* (1) Applications for modifications are subject to the notice requirements of § 806.15.

(2) The Commission or Executive Director may approve, approve with conditions or deny an application for minor modification, or direct that an application for major modification be made.

(3) The Commission may approve, approve with conditions or deny an application for major modification.

Dated: December 7, 2015.

Stephanie L. Richardson,
Secretary to the Commission.

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